

COPY



Nevada County Recorder

Gregory J. Diaz

DOC- 2007-0034331-00

Check Number \$ 15984

Wednesday, NOV 07, 2007 13:45:00

REC \$21.00:CCF \$1.00:SBS \$16.00

MIC \$1.00:AUT \$17.00:

Ttl Pd \$56.00

Nbr-0000522991

VJR/JR/1-17

RECORDING REQUESTED BY:

Phillip Ruble

Broad & Boulder Properties, Inc.

435 Sutton Way

Grass Valley, CA 95945

WHEN RECORDED MAIL TO:

Department of Toxic Substances Control

8800 Cal Center Drive

Sacramento, California 95826-3200

Attn: James L. Tjosvold, PE, Chief

Northern California-Central Cleanup

Operations Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

CORRECTORY

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: Portion Lot 1, American Hill Estates

Near the intersection of American Hill Road and Old Downieville Highway

Nevada County, California 95959

Assessor's Parcel Number 05-100-71

This Correctory Covenant and Agreement is made to correct Exhibit "A" and "B" in the document recorded as Document Number 2007-0028509-00, Nevada County Records, on September 10, 2007. More specifically, Exhibit "A" and "B" have been corrected to describe and delineate a larger fenced area than shown on said document, and which now includes both the Pond/Buried Waste Rock Material Area ("Pond") and the former Foundation Area outlined in said document. The modified fenced area is 0.76 acres.

The following language is as recorded in the above referenced document with no changes to the language or intent of said document except for the stated acreage as corrected above:

RECORDING REQUESTED BY:

Phillip Ruble
Broad and Boulder Properties
101 Boulder Street
Nevada City, California 95959

WHEN RECORDED MAIL TO:

Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200
Attention: James L. Tjosvold, P.E. Chief
Northern California-Central Cleanup
Operations Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

Re: Portion of Lot 1, American Hill Estates
Near the intersection of American Hill Road and Old Downieville Highway
Nevada County, California 95959
Assessor's Parcel Number 05-100-71

This Covenant and Agreement ("Covenant") is made by and between Broad and Boulder Properties (the "Covenantor"), the current owner of property situated in Nevada City, County of Nevada, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The

Covenantor and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01 The Property, totaling approximately 0.76 acres is more particularly described in Exhibit "A" and depicted in Exhibit "B", attached hereto and incorporated herein by this reference. The Property subject to this Covenant is defined as a portion of Lot 1 and includes the former Foundation Area and the Pond/Buried Waste Rock Material Area (Pond Area). Located approximately 0.6 miles west of the city limits of Nevada City, the Property is generally bounded by the roadway named "Queen' Lil Place" to the north, American Hill Road to the east, Old Downieville Highway to the south and open space to the west, all in the County of Nevada, State of California. The Property is more specifically described as a portion of Nevada County Assessor's Parcel Number 05-100-71. The Property is located within the 24 acre American Hill Estates Lot 15 development that was the subject of a Preliminary Endangerment Assessment as noted below.

1.02 Remedial measures conducted at the Property were not performed under the oversight of DTSC. The Nevada County Environmental Health Department provided regulatory oversight for a small scale soil removal action conducted at the former Foundation Area, located within the northern portion of the Lot 1 Area which is adjacent to the southern boundary of Queen 'Lil Place and is near that roadway's intersection with American Hill Road. American Hill Road is adjacent to the Property's eastern boundary. The remedial action, performed during December 2005 and January 2006, consisted of the excavation and offsite disposal of approximately 35 cubic yards of lead impacted soil to achieve concentrations below the required remedial goal of 243 milligrams per kilograms (mg/kg). Specifically, the confirmation soil sampling data collected after completion of the soil removal action indicated lead concentrations ranging from 4.7 mg/kg to 24.2 mg/kg. The Property that is the subject of this deed restriction contains stockpiles and buried

waste rock material that is associated with historical mining activities that were conducted on the property. As outlined in the November 7, 2002 report titled "REVISED ABANDONED MINE LAND PRELIMINARY ENDANGERMENT ASSESSMENT FOR AMERICAN HILL ESTATES LOT 15 – NEVADA COUNTY, CALIFORNIA" (PEA report) the waste rock on the Property (identified as the Foundation Area and the Pond Area) contains elevated concentrations of arsenic that DTSC has determined is not acceptable for unrestricted land use based upon the screening level risk evaluation provided in the PEA report and a subsequent report titled "POST-REMEDIATION REPORT AND SITE CLOSURE REQUEST" (Closure Report) dated June 6, 2006. The PEA report was approved by the Department on July 1, 2003. A copy of the PEA report and Closure report are on file in the Department's records.

This deed restriction is being entered into for the Property because arsenic, which is a hazardous substance as defined in H&SC section 25316, and is also a hazardous material as defined in H&SC section 25260, remains in waste rock material present at the surface and in the subsurface of the Property.

As discussed under Section 7.07 of this document, the Covenantor has installed fencing to prevent access by unauthorized personnel. Fencing at the site consists of a combination of 5 foot high non-climb fence posts and 5 foot high, 12.5 gauge woven wire fencing around the perimeter of the Property (Exhibit "C" describes the fencing materials and indicates the location of the various types of fencing). Operation and maintenance of this fencing is addressed in a separate Operation and Maintenance (O&M) Agreement which is incorporated into this document by reference.

1.03 As detailed in the screening level risk assessment provided in the approved PEA report and Closure report, arsenic, which is a hazardous substance as defined in H&SC section 25316, is present at the surface and in the subsurface of the Property. For the Pond Area, the 95 percent Upper Confidence Level (UCL) of the arithmetic mean was 46.4 milligrams per kilogram. These arsenic concentrations resulted in a calculated risk and hazard index for the Pond Area of $3 \times 10^{-5} / 0.6$. Based upon the results of the screening level risk assessment, which evaluated the area using the trespasser exposure scenario, the Department concluded that use of the Property as a residence, hospital, school for

persons under the age of 21 or day care center would entail an unacceptable cancer risk and non-cancer hazard.

The Department further concluded that the Property, as remediated and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment if access to the Property is prohibited and there is no "sensitive use" development of the area as is prohibited in Section 4.01 of this document, and the only potential exposure scenario is to a trespasser.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but are not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns who at any time hold title to all or any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05 Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, leases, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN)

noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owner hereby covenants for himself and for all subsequent Owners that, pursuant to Title 22 California Code of Regulations section 67391.1(h), the Owner agrees to pay the Department's cost in administering the Covenant. The O&M Agreement provides additional information on payment of costs for activities associated with the deed restriction as well as information on the financial assurance established as part of the O&M Agreement.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the waste rock material or soil present at or below grade (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and Health and Safety Plan approved by the Department.

- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops).
- (b) Drilling for water, oil, or gas without prior written approval by the Department.
- (c) Disturbance of naturally occurring vegetation unless required for fire safety, or as part of fire suppression activities, or as part of a maintenance plan to ensure the continued visibility of the signage related to this deed restriction.
- (d) Development of trails or roads that provide access to or through the Property.
- (e) Use of the area for any recreational purposes that would entail human entry onto the property (e.g., a golf course).
- (f) Excavation without the Department's prior approval of a Soil Management Plan.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Access for Implementing Operation and Maintenance. The entity or person(s) responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Modification. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Nevada within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Phillip Ruble, President
Broad & Boulder Properties, Inc.
101 Boulder Street
Nevada City, California 95959

To Department:

James L. Tjosvold, P.E., Chief
Northern California Cleanup Operations Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

7.07. Fencing and Maintenance Required. The five foot high, 12.5 gauge woven wire fencing installed around the perimeter of the Property (as described in Exhibit C) shall ensure that the Property remains secured and inaccessible. The fencing shall be maintained as long as the hazardous materials remain on the Property. Upon identifying that the security provide by the fencing has been compromised (e.g., damaged, or portions of the fence removed, or cut by trespassers), the fence shall be temporarily secured to prevent access and repaired as soon as possible. Additionally, the condition of the fence, and signage as set forth in 7.08 below, and any required maintenance shall be valued as part of the annual inspections of the area outlined in 7.09 below.

7.08. Signs Marking the Deed Restricted Property. Signs indicating that the area is subject to a deed restriction shall be posted so they are visible from the surrounding area and any existing routes of entry to the Property. The signs should read "This area is subject to a deed restriction recorded in Nevada County on (insert actual recording date in Month, Day, Year format) in Book ____ and Page _____. (Insert actual Book and Page numbers or Document number if used in lieu of Book and Page.) This Deed restriction was recorded because arsenic released by mining activities is present in concentrations on this parcel that do not allow for unrestricted use. Human contact with the soil and rock on this parcel should be avoided. For more information please contact the Department of Toxic Substances Control at (916) 255-3953."

The owner shall post and maintain all signs on the perimeter fencing as required by the Department under the Operation and Maintenance Agreement. The signs shall be made of a material able to withstand the elements.

7.09 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15th of each year. The annual report, must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any

violations of this Covenant during the annual inspections, or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of this Covenant and demand that the violation ceases immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Broad & Boulder Properties, Inc.

By: _____

Title: Phillip Ruble, President

Date: 11/5/07

Department of Toxic Substances Control

By: _____

Title: James L. Tjosvold P.E., Chief

Date: 11/6/07

STATE OF CALIFORNIA

COUNTY OF Nevada

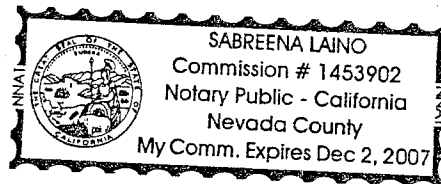
On November 5, 2007 before me,

Sabreena Laino, Notary
(Here insert name and title of the officer/notary),

Personally appeared, ^{→ Phillip L. Ruble} personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity~~(ies)~~, and that by his her/their signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Signature Sabreena Laino (Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

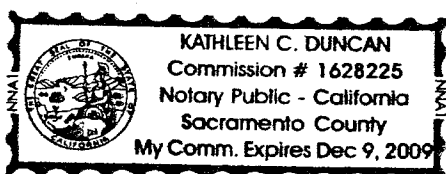
State of California

County of Sacramento } ss.

On November 2, 2007, before me, Kathleen C. Duncan,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared James L. Livewood,
Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

Kathleen C. Duncan
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

October 26, 2007

EXHIBIT "A"

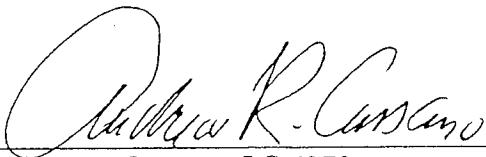
A **Deed Restriction** is being created on the following described parcel:

ALL THAT PORTION of the lands of Broad and Boulder, Inc. as described in the deed filed in Document Number 99-25478, Nevada County Records, situate within a portion of the East half of Section 11, Township 16 North, Range 8 East, M.D.M., Nevada County, California, **BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

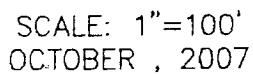
BEGINNING at a point from which the East Quarter Corner of said Section 11 bears North 51°05'14" East 1145.80 feet; **THENCE FROM SAID POINT OF BEGINNING** South 82°30'00" West 6.13 feet to a point on the westerly sideline of said lands of Broad and Boulder, Inc; thence following said westerly sideline North 13°45'00" West 351.09; thence leaving said westerly sideline North 32°00'00" East 9.99 feet; thence North 15°00'00" East 24.98 feet; thence South 49°00'00" East 62.63 feet; thence South 62°30'00" East 24.21 feet; thence South 45°30'00" East 8.60 feet; thence South 39°00'00" East 15.03 feet; thence South 31°00'00" East 58.15 feet; thence South 23°00'00" East 23.07 feet to a point on the westerly sideline of American Hill Road; thence following said westerly road line South 09°27'00" East 166.78 feet; thence leaving said westerly road line South 03°30'00" East 19.94 feet; thence South 08°00'00" East 37.27 feet **TO THE POINT OF BEGINNING** and containing 0.76 acres.

This legal description was prepared by me in October, 2007.




Andrew R. Cassano, LS 4370
Professional Land Surveyor

DOC. NO. 99-25478



1.	S	82°30'00"	W	86.13'
2.	N	13°45'00"	W	351.09'
3.	N	32°00'00"	E	9.99'
4.	N	15°00'00"	E	24.98'
5.	S	49°00'00"	E	62.63'
6.	S	62°30'00"	E	24.21'
7.	S	45°30'00"	E	8.60'
8.	S	39°00'00"	E	15.03'
9.	S	31°00'00"	E	58.15'
10.	S	23°00'00"	E	23.07'
11.	S	09°27'00"	E	166.78'
12.	S	03°30'00"	E	19.94'
13.	S	08°00'00"	E	37.27'

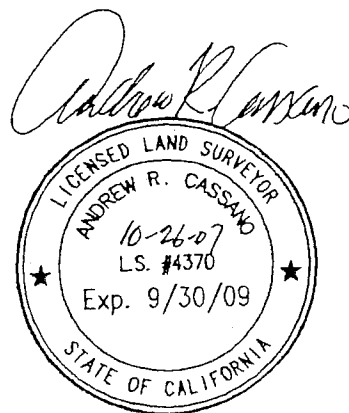


EXHIBIT "B"

Broad and Boulder, Inc.

WITHIN A PORTION OF THE
E 1/2 SECTION 11, T. 16 N. , R. 8 E. , M.D.M.
WITHIN THE UNINCORPORATED TERRITORY OF
NEVADA COUNTY , CALIFORNIA

NEVADA CITY ENGINEERING, INC.
505 COYOTE STREET - P.O. BOX 1437 - NEVADA CITY, CALIFORNIA